

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harold Rodriguez	Team: Squad #3	CCRB Case #: 201507838	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/30/2015 1:10 AM	Location of Incident: Pitkin Avenue and Legion Street and 73rd Precinct Stationhouse	Precinct: 73	18 Mo. SOL 2/28/2017	EO SOL 2/28/2017	
Date/Time CV Reported Wed, 09/16/2015 10:31 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 09/16/2015 10:31 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Kalish	10483	949156	073 PCT
2. SGT Matthew Cahill	01163	932397	073 PCT
3. POM Rafael Figueroa	25243	948336	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Matthew Cahill	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT Matthew Cahill	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Rafael Figueroa	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, PO Rafael Figueroa searched the vehicle in which § 87(2)(b) was an occupant.	
D.POM Michael Kalish	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, PO Michael Kalish frisked § 87(2)(b)	
E.POM Michael Kalish	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, PO Michael Kalish searched § 87(2)(b)	
F.SGT Matthew Cahill	Abuse: At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill seized § 87(2)(b)'s property.	
G.SGT Matthew Cahill	Abuse: At the 73rd Precinct Stationhouse, Sgt. Matthew Cahill detained § 87(2)(b)	
H.POM Michael Kalish	Abuse: At the 73rd Precinct stationhouse, PO Michael Kalish searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b), § 87(2)(g)

On August 30, 2015, at approximately 1:10 a.m., § 87(2)(b) was pulled over for a traffic infraction at the corner of Pitkin Avenue and Legion Street in Brooklyn by PO Michael Kalish, Sgt. Matthew Cahill and PO Rafael Figueroa of the 73rd Precinct (**Allegation A**). § 87(2)(b) opened his glove compartment to get his documents and allegedly exposed a sealed hunting scope. As a result, PO Kalish asked § 87(2)(b) out of the vehicle while Sgt. Cahill and PO Figueroa allegedly searched it (**Allegations B and C**). PO Kalish allegedly frisked § 87(2)(b) and searched his pockets (**Allegations D and E**). § 87(2)(b) was then handcuffed and taken to the 73rd Precinct stationhouse and his vehicle was seized (**Allegation F**). § 87(2)(b) was detained at the 73rd Precinct stationhouse and allegedly interviewed regarding the hunting scope inside of his vehicle, and his New Mexico Conceal/Carry Permit (**Allegation G**). PO Kalish then searched § 87(2)(b)'s vehicle (**Allegation H**) and he was ultimately released with a summons for disobeying pavement markings.

There is no video associated with this case.

§ 87(2)(b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s residency.
- An updated request for a Notice of Claim was sent to the NYC Comptroller's office and will be added to the case file upon receipt.
- § 87(2)(b) has no criminal convictions in the last ten years.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 01).
- PO Michael Kalish has been a member of service for 5 years and has no substantiated allegations against him.
- Sgt. Matthew Cahill has been a member of service for 12 years and has one substantiated allegation of force in CCRB case 200507025.
- PO Rafael Figueroa has been a member of service for 6 years and has two substantiated allegations of stop and question in CCRB case 201110498.

Potential Issues

- On October 19, 2015, § 87(2)(b) sent an email to the undersigned investigator stating that he had moved to Saudi Arabia since the incident and had no means of communication other than email.

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) described the third officer as a 5'7" tall, white or Hispanic male. PO Figueroa is a 5'6" Hispanic male with light skin. Although PO Figueroa did not recall this incident or who his partner was on the date of the incident, and had no note of it in his memo book, his memo

book did note that he was in RMP 648, which was the same vehicle that PO Kalish and Sgt. Cahill used. (BR 02). As PO Figueroa matched the description provided by § 87(2)(b) and was noted to be working in the same vehicle as Sgt. Cahill and PO Kalish, it was determined that he was the third officer involved in § 87(2)(b)'s vehicle stop.

Allegation A – Abuse of Authority: At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that he was pulled over by officers for allegedly disobeying pavement markings. § 87(2)(b) stated that he did not commit any traffic infractions to his knowledge. PO Kalish and Sgt. Cahill both stated in their interviews that § 87(2)(b) was in the left turn lane at the intersection of Howard Avenue and East New York Avenue. Once the light turned green, § 87(2)(b) proceeded straight through the intersection onto Pitkin Avenue. Both officers made the decision to conduct a car stop as a result of the traffic infraction.

NYS VTL 1110 states that, every person shall obey the instructions of any official traffic-control device applicable to him unless otherwise directed by a traffic or police officer (BR 03).

§ 87(2)(b), § 87(2)(g)

Allegation B – Abuse of Authority: At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill searched the vehicle in which § 87(2)(b) was an occupant.

Allegation C – Abuse of Authority: At Pitkin Avenue and Legion Street in Brooklyn, PO Rafael Figueroa searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D – Abuse of Authority: At Pitkin Avenue and Legion Street in Brooklyn, PO Michael Kalish frisked § 87(2)(b)

Allegation E – Abuse of Authority: At Pitkin Avenue and Legion Street in Brooklyn, PO Michael Kalish searched § 87(2)(b)

§ 87(2)(b) stated that he was asked by PO Kalish for his license and registration. § 87(2)(b) reached into his glove compartment for the vehicle documents and Sgt. Cahill noticed a hunting scope sealed in its original packaging in the glove compartment. PO Kalish asked § 87(2)(b) to step out of the vehicle and then Sgt. Cahill and PO Figueroa searched the vehicle. Sgt. Cahill opened every closed compartment of the vehicle during the search and found a grinder which could be used for marijuana. In § 87(2)(b)'s initial intake statement, he stated that the grinder contained marijuana residue but in a later statement, he said that the grinder could possibly be used to break down marijuana. PO Kalish then patted down and searched § 87(2)(b)'s pockets and looked through his wallet, finding § 87(2)(b)'s license to carry a concealed weapon from New Mexico.

PO Kalish stated that he did not enter or search the vehicle and did not see any other officer do so. He stated that § 87(2)(b) provided his license but not the registration or proof of insurance. Additionally, he smelled the odor of marijuana emanating from § 87(2)(b)'s vehicle as he approached it. PO Kalish asked § 87(2)(b) to step out of the vehicle and lean against it. PO Kalish questioned § 87(2)(b) about the vehicle to try to establish ownership but § 87(2)(b) continuously looked back at the front of the vehicle and refused to stay still. PO Kalish stated that he did not recall seeing a hunting scope inside of § 87(2)(b)'s vehicle and did not recall any conversation related to such an object. He also stated that he never saw a license to carry concealed weapons during the car stop and did not find a grinder in the vehicle. PO Kalish did not

search or frisk § 87(2)(b) and did not know if his partners did. At the stationhouse, PO Kalish searched § 87(2)(b)'s vehicle and did not find any marijuana.

Sgt. Cahill was consistent that there was an odor of marijuana coming from the vehicle upon approach and that § 87(2)(b) only provided his license. However, Sgt. Cahill did not recall if § 87(2)(b) did not have the other documents or if he refused to provide them. Sgt. Cahill later retracted his statement and stated that he did not recall if § 87(2)(b) ever provided his license. Sgt. Cahill stated that § 87(2)(b) was fidgeting and reaching around the car seat, so he was asked to step out of the vehicle and step to the rear. PO Kalish looked into the vehicle around the area where § 87(2)(b) reached and looked around the driver's seat for marijuana but did not enter the vehicle. He stated that he did not search the vehicle and PO Kalish did not search the vehicle either. Sgt. Cahill did not recall if § 87(2)(b) was frisked or searched. § 87(2)(b) continuously tried to walk back to the driver's seat and out into the street. Sgt. Cahill did not recall if § 87(2)(b) produced a license to carry concealed weapons and did not recall seeing a hunting scope or a grinder in the vehicle. According to Sgt. Cahill there was no marijuana found in the vehicle.

PO Figueroa had no recollection of the incident and did not recall who he worked with on the date of the incident. He stated that he did not know if he worked with PO Kalish and Sgt. Cahill and did not recall any vehicle stop involving a hunting scope.

§ 87(2)(b), § 87(2)(g)

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Allegation F – At Pitkin Avenue and Legion Street in Brooklyn, Sgt. Matthew Cahill seized § 87(2)(b)'s property.

Allegation G – At the 73rd Precinct Stationhouse, Sgt. Matthew Cahill detained § 87(2)(b)

According to § 87(2)(b) there was no issue with his registration during the car stop, although it is unknown if he provided it. § 87(2)(b) stated that when he opened his glove compartment to get the registration, the gun scope was visible and he was asked to step out of the vehicle before he could provide the document to the officers. § 87(2)(b) did not know where the grinder was found in the vehicle. § 87(2)(b) stated that he was taken to the 73rd Precinct stationhouse and his vehicle was driven to the stationhouse by an officer. § 87(2)(b) was taken to a room on the second floor. He was eventually informed that he was arrested for the marijuana residue in the grinder. He was handcuffed to a chair and interviewed by PO Kalish, Sgt. Cahill and PO Figueroa. They questioned him about the scope in his vehicle and asked him if he had any guns in New York City. § 87(2)(b) was eventually released with the summons for disobeying pavement markings and his scope and grinder were returned to him.

According to PO Kalish, § 87(2)(b) provided his driver's license but could not produce paperwork for his vehicle. § 87(2)(b) said the vehicle belonged to him but could not provide the paperwork to prove it. PO Kalish did not know if § 87(2)(b) could not find the documents or if he did not have them. PO Kalish asked § 87(2)(b) to step out of the vehicle and asked § 87(2)(b) about the vehicle. As he spoke to him near the rear of the vehicle, § 87(2)(b) would not stay still and kept looking back at the vehicle. He stated that a hunting scope or a grinder was never found in the vehicle and that § 87(2)(b) was only taken to the stationhouse to establish ownership of the vehicle. PO Kalish also stated that § 87(2)(b)'s vehicle could have been left legally parked at the scene but it was seized due to the odor of marijuana that emanated from the vehicle. Once at the stationhouse, PO Kalish stated that he did interview § 87(2)(b) inside of a room in the anti-crime office along with Sgt. Cahill. PO Kalish stated that they interviewed § 87(2)(b) for approximately 20 minutes and there was no mention of hunting scopes, grinders or weapons. PO Kalish could not recall the exact details of the interview but stated that it was likely about the ownership of the vehicle. After the interview, PO Kalish searched the vehicle at the stationhouse and eventually found the vehicle's registration, which was enough to determine that § 87(2)(b) owned the vehicle. § 87(2)(b) was then released with the traffic summons. PO Kalish stated that if § 87(2)(b) had a hunting scope, it would not have been an arrestable offense.

Sgt. Cahill stated that § 87(2)(b) was taken to the stationhouse because he was non-compliant at the scene. As PO Kalish looked into the vehicle, § 87(2)(b) kept trying to walk back to the driver's side doorway and out into the middle of the street. Since § 87(2)(b) could not stay still he was placed in handcuffs and taken to the stationhouse to be issued the summons. § 87(2)(b) and his vehicle were taken to the stationhouse by an unknown officer because they could not issue him the summons at the scene due to his behavior. Sgt. Cahill originally said that § 87(2)(b) had provided his license but then stated the he did not recall if § 87(2)(b) provided it. § 87(2)(b) failed to provide proof of insurance and registration but he did not know if § 87(2)(b) refused or did not have them. Sgt. Cahill stated that upon arriving at the stationhouse, he input § 87(2)(b)'s information into the command log and then released him with a summons. According to Sgt. Cahill, § 87(2)(b) was not interviewed at the stationhouse and there was never any conversation about a grinder, a hunting scope or any weapons that § 87(2)(b) might have. Sgt. Cahill denied that § 87(2)(b) was taken to the stationhouse to establish ownership of the vehicle and did not recall if an inventory search was done on the vehicle. Sgt. Cahill stated that individuals are interviewed at the stationhouse if they had a firearm or a large amount of drugs on them. It was also his understanding that if someone had a hunting scope in their vehicle, it was an arrestable offense and § 87(2)(b) would have been arrested or issued a summons if he saw one.

PO Figueroa did not recall if he was at the stationhouse or participated in any interviews with § 87(2)(b). He stated that the commanding officer of the 73rd Precinct instructed all officers to interview everybody that they arrest unless the perpetrator refuses to speak. He had no recollection of ever interviewing § 87(2)(b) regarding a marijuana grinder, a hunting scope or weapons.

All three officers were shown a stock photo of the hunting scope that was allegedly in § 87(2)(b)'s vehicle. The picture was obtained from the website where § 87(2)(b) stated that he bought the scope. The three officers denied seeing any scope of that sort during any car stop on the date of the incident.

On the Command Log, Sgt. Cahill noted that § 87(2)(b) was arrested for Criminal Possession of Marijuana and disobeying pavement markings (BR11).

Article 265 of the New York Penal Law (BR 05), lists several weapons and objects that can be considered under “Criminal Possession of a Weapon.” This article prohibits firearms, darts, and several types of knives among other things. The article also lists unloaded firearms and possession of ammunition feeding devices as arrestable offenses. However, there is no mention of weapon attachments, such as hunting scopes, being prohibited.

Patrol Guide Procedure 218-19 states that an officer may seize a vehicle as arrest evidence if they cannot determine the true owner and an immediate arrest is not warranted (BR04).

“The preferred procedure involving arrest for Vehicle and Traffic Law Violations in New York without more would be to issue a summons when the police are provided with the necessary information by the arrestee rather than to conduct a custodial arrest. However, under certain circumstances, such procedure while preferable may be rendered impracticable and unreasonable based upon the totality of the facts and circumstances of any given case.” People v. Bradford, 957 N.Y.S.2d 637 (Onandaga Cty. Ct., May 2010) (BR 06).

In People v. Graham, 54 A.D.3d 1056, 1058 (2nd Dep’t., 2008), an individual that was stopped for a traffic infraction was lawfully arrested for obstruction of governmental administration in the second degree when “the defendant became belligerent and uncooperative, and refused several direct requests to remain standing or seated in one place. This inappropriate and disruptive conduct at the scene of the performance of an official function provided the officer with probable cause to arrest.” (BR 07)

NYPD Operations Order 43 (BR10) which was issued on November 11, 2014, instructs officers to issue eligible people “a Criminal Court summons [for Unlawful Possession of Marijuana] in lieu of arrest [for Criminal Possession of Marijuana] to people found in possession of a small amount of marijuana – defined as 25 grams or less – in a public place and open to public view.” Eligible people are those who have no outstanding warrants and who are not wanted for arrest. The interim order also instructs officers to issue the “summons in the field unless further investigation is needed or conditions warrant processing at a Department facility.”

§ 87(2)(b) and PO Kalish both stated that a driver’s license was provided by § 87(2)(b) during the car stop. PO Kalish stated that § 87(2)(b) did not provide the registration to his vehicle and therefore the ownership of his vehicle was in question. § 87(2)(b) denied that the registration to his car was ever an issue during the car stop and Sgt. Cahill had no recollection of there being an issue with ownership of the car. PO Kalish also noted that the vehicle was searched at the stationhouse and the registration was found. The fact that the registration was found during the inventory search indicates that the registration was in the vehicle the entire time of the car stop. Since the registration was in the vehicle, it could have been obtained either by one of the officers or § 87(2)(b) himself without the need to remove him and his vehicle from the scene.

PO Kalish and Sgt. Cahill both stated that § 87(2)(b) kept looking back towards the driver’s side of the vehicle and would not stay still. Sgt. Cahill also stated that § 87(2)(b) walked back and forth into the street. In the case law noted above, the defendant was belligerent and uncooperative and refused several requests to stay in place. PO Kalish denied that § 87(2)(b)’s behavior was the reason for bringing § 87(2)(b) back to the stationhouse. § 87(2)(b)’s alleged behavior, as described by the officers, was not egregious and was nothing that could cause the officers a concern for their safety, especially since there were three of them at the scene. Neither officer noted any violent or aggressive behavior from § 87(2)(b)’s behavior alone was not enough to obstruct the officers from writing a traffic violation summons and did not justify his handcuffing and removal from the location.

§ 87(2)(b) alleged that a grinder was found in his vehicle by the officers which likely had marijuana residue. He also stated that upon being released, the grinder was returned to him. PO Kalish and Sgt. Cahill both denied that a grinder was found in the vehicle but stated that they smelled marijuana. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b) believed that the reason he was detained was for the hunting scope and the license to carry a concealed weapon. Although PO Kalish and Sgt. Cahill both denied seeing either of those things, it is undisputed that § 87(2)(b) was interviewed at the stationhouse. Sgt. Cahill stated that it was his understanding that arrestees are always interviewed if they are in possession of a firearm or a large amount of drugs. Sgt. Cahill's specific reasons for a person being interviewed at the stationhouse add credence to § 87(2)(b)'s statement that he was interviewed about guns because of his permit and hunting scope. § 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b)

§ 87(2)(b)

Allegation H - At the 73rd Precinct stationhouse, PO Michael Kalish searched the vehicle in which § 87(2)(b) was an occupant.

PO Kalish searched § 87(2)(b)'s vehicle at the stationhouse and found the registration that belonged to § 87(2)(b)

Patrol Guide Procedure 218-13 states that to protect property and ensure unwarranted claims of theft, vehicles that are brought to the stationhouse should be thoroughly searched in areas that may contain valuables (BR 08).

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b)

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(4-b), § 87(2)(g)

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Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date